

AMENDED IN SENATE MARCH 19, 2015

SENATE BILL

No. 233

Introduced by Senator Hertzberg
(Coauthor: Assembly Member Rendon)

February 13, 2015

An act to amend ~~Section 5993 of the Fish and Game Code, relating to fish and wildlife. Sections 6603, 6604, 6610, 6611, 6612, 6613, 6614, 6615, 6616, and 6618 of the Fish and Game Code, relating to ocean resources.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 233, as amended, Hertzberg. ~~Conduits and screens: fish screen monitoring.~~ *Marine resources and preservation.*

(1) *The California Marine Resources Legacy Act establishes a program, administered by the Department of Fish and Wildlife, to allow partial removal of offshore oil structures. The act authorizes the department to approve the partial removal of offshore oil structures, if specified criteria are satisfied. The act requires an applicant, upon conditional approval for removal, to apportion a percentage of the cost-savings funds in accordance with a prescribed schedule to specified entities and funds. The act defines "cost savings" to mean the difference between the estimated cost to the applicant of complete removal of an oil platform, as required by state and federal leases, and the estimated costs to the applicant of partial removal of the oil platform pursuant to the act, and specifically provides for the inclusion of certain costs in cost savings.*

The bill would require an applicant, upon conditional approval for partial removal of an offshore oil structure, to transmit a portion of the cost savings to the department, instead of to the specified entities and

funds. The bill would require the department to apportion those cost-savings funds received from the applicant in accordance with a prescribed schedule based on the date the application was submitted to the department. The bill would authorize the applicant to withdraw the application at any time before final approval and would require the department to return specified funds submitted to process the application that have not been expended as of the date of receipt of the notification of withdrawal.

(2) Existing law requires the Natural Resources Agency to serve as the lead agency for the environmental review under the California Environmental Quality Act (CEQA) of a proposed project to partially remove an offshore oil structure pursuant to the California Marine Resources Legacy Act. Upon certification of environmental documents pursuant to CEQA, the California Marine Resources Legacy Act requires the State Lands Commission to determine the cost savings of partial removal compared to full removal of the structure and requires the Ocean Protection Council to determine whether partial removal provides a net environmental benefit to the marine environment compared to the full removal of the structure.

This bill would instead require the department to serve as the lead agency for the environmental review under CEQA, to determine the cost savings of partial removal compared to full removal of the structure, and to determine whether partial removal provides a net environmental benefit to the marine environment compared to the full removal of the structure.

The bill would require the department, in determining whether partial removal of the structure would provide a net benefit to the marine environment compared to full removal of the structure, to take certain adverse impacts to air quality and greenhouse gas emissions into account and to consult with the State Air Resources Board and the Ocean Protection Council, among other entities.

~~Existing law regulates the construction and installation of any screen installed on conduits used in producing, generating, transmitting, delivering, or furnishing electricity for light, heat, or power and conduits with a maximum flow capacity over 250 cubic feet per second of water to prevent fish from passing through the conduit. Existing law requires, before the installation of any screen, the Department of Fish and Wildlife and the owner to enter into an agreement that defines the method of determining the cost of maintenance, repairs, operation, and keeping the screen free of debris.~~

~~This bill would additionally require the agreement to define the method of determining the cost of monitoring the screen's performance.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 6603 of the Fish and Game Code is*
2 *amended to read:*

3 6603. (a) This chapter establishes a program through which
4 an applicant may voluntarily apply to the department to carry out
5 partial removal of the structure.

6 (b) The program established pursuant to this chapter shall be
7 deemed consistent with, and part of, the California Artificial Reef
8 Program pursuant to Article 2 (commencing with Section 6420)
9 of Chapter 5 for purposes of compliance with federal law including
10 the National Fishing Enhancement Act of 1984.

11 (c) ~~Except as specified in Section 6604, the~~ The department
12 shall serve as the primary authority for carrying out the program,
13 including review and approval of applications to partially remove
14 an offshore oil structure in state or federal waters and management
15 and operation of decommissioned offshore oil structures in state
16 or federal waters approved pursuant to this chapter.

17 (d) Final approval of an application shall not be granted until
18 the applicant complies with all requirements of the chapter,
19 including the payment of all costs to the state to review and approve
20 the proposed project as required by subdivision (b) of Section 6612
21 and the transmittal of the required portion of cost savings to the
22 endowment and other parties as required by Section 6618.

23 (e) The department may obtain funds for the planning,
24 development, maintenance, and operation of an offshore oil
25 structure transferred to the department pursuant to this chapter and
26 may accept gifts, subventions, grants, rebates, reimbursements,
27 and subsidies from any lawful source.

28 (f) The department may adopt regulations to implement this
29 chapter.

30 *SEC. 2. Section 6604 of the Fish and Game Code is amended*
31 *to read:*

32 6604. (a) A proposed project to partially remove an offshore
33 oil structure pursuant to this chapter is a project as defined in

subdivision (c) of Section 21065 of the Public Resources Code and is therefore subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be reviewed pursuant to the time limits established in Section 21100.2 of the Public Resources Code.

(b) ~~The Natural Resources Agency~~ department shall serve as the lead agency for the environmental review of any project proposed pursuant to this chapter.

SEC. 3. Section 6610 of the Fish and Game Code is amended to read:

6610. (a) An owner or operator, or other party responsible for decommissioning, of an offshore oil structure may apply to the department for approval to partially remove the structure pursuant to the requirements of this chapter.

(b) The department shall design and make available to potential applicants an application process that will facilitate review of the application by the department in a timely manner, consistent with Section 6604.

(c) Upon receipt of an application pursuant to this section, the department shall transmit a copy of the application to the ~~council, the commission, and the endowment, which shall constitute notice to these agencies.~~ endowment.

SEC. 4. Section 6611 of the Fish and Game Code is amended to read:

6611. (a) The application for partial removal shall include, at a minimum, all of the following:

(1) The applicant's plan and schedule for partial removal of the offshore oil structure, including removal of any portion of the structure as appropriate to maintain navigational safety.

(2) A determination of the estimated cost of partial removal and the estimated cost of full removal.

(3) A determination of the environmental impacts and benefits to the marine environment from partial removal and full removal of the structure.

(4) Identification of all permits, leases, and approvals required by any governmental agency, including a permit issued by the United States Army Corps of Engineers if required for offshore oil structures, and a lease issued by the commission if the proposed project involves state tidelands and submerged lands, and a

1 proposed schedule for the applicant or the state to receive those
2 permits, leases, and approvals.

3 (b) The department may require the applicant to submit a
4 management plan for the structure following partial removal,
5 including maintenance in a manner consistent with navigational
6 safety, enforcement, and monitoring.

7 (c) The information submitted pursuant to subdivisions (a) and
8 (b) shall be used by the department for advisory purposes only.
9 Final determinations regarding the partial removal and management
10 of the offshore oil structure, net benefit to the marine environment
11 from partial removal, and cost savings from partial removal shall
12 be made solely by the department, ~~council, and commission~~, as
13 specified in this chapter, based on ~~their~~ *its* independent review and
14 judgment.

15 *SEC. 5. Section 6612 of the Fish and Game Code is amended*
16 *to read:*

17 6612. (a) Upon receipt of an application to partially remove
18 an offshore oil structure pursuant to this chapter, the department
19 shall determine whether the application is complete and includes
20 all information needed by the department.

21 (b) (1) Upon a determination that the application is complete,
22 the applicant shall provide surety bonds executed by an admitted
23 surety insurer, irrevocable letters of credit, trust funds, or other
24 forms of financial assurances, determined by the department to be
25 available and adequate, to ensure that the applicant will provide
26 sufficient funds to the ~~department, council, commission,~~
27 *department* and conservancy to carry out all required activities
28 pursuant to this article, including all of the following:

29 (A) Environmental review of the proposed project pursuant to
30 Section 6604.

31 (B) A determination of net environmental benefit pursuant to
32 Section 6613.

33 (C) A determination of cost savings pursuant to Section 6614.

34 (D) Preparation of a management plan for the structure pursuant
35 to Section 6615.

36 (E) Implementation of the management plan and ongoing
37 maintenance of the structure after the department takes title
38 pursuant to Section 6620.

39 (F) Development of an advisory spending plan pursuant to
40 Section 6621.

(G) Other activities undertaken to meet the requirements of this article, including the costs of reviewing applications for completeness, and reviewing, approving, and permitting the proposed project, which includes the costs of determining whether the project meets the requirements of all applicable laws and regulations and the costs of environmental assessment and review.

(2) The department shall consult with the ~~council, commission,~~ and conservancy in determining appropriate funding for activities to be carried out by ~~those agencies.~~ *the conservancy.*

(3) The funds provided pursuant to paragraph (1) shall not be considered in the calculation of cost savings pursuant to Section 6614 or the apportionment of cost savings pursuant to Section 6618.

(c) The first person to file an application on and after January 1, 2011, to partially remove an offshore oil structure pursuant to this chapter, shall pay, in addition to all costs identified under subdivision (b), the startup costs incurred by the department ~~or the commission~~ to implement this chapter, including the costs to develop and adopt regulations pursuant to this chapter. This payment of startup costs shall be reimbursed by the department as provided in paragraph (3) of subdivision (c) of Section 6618.

(d) As soon as feasible after ~~reaching the agreement the applicant provides financial assurances~~ pursuant to subdivision (b), the ~~lead agency~~ *department* shall begin the environmental review of the proposed project as required pursuant to Section 6604.

(e) *The applicant may withdraw the application at any time before final approval. Upon notification that the applicant has withdrawn the application, the department shall return to the applicant any funds provided under subdivisions (b) and (c) that have not been expended as of the date of receipt of notification of withdrawal.*

SEC. 6. Section 6613 of the Fish and Game Code is amended to read:

6613. (a) ~~The council~~ *department* shall determine whether the partial removal of an offshore oil structure pursuant to this chapter provides a net benefit to the marine environment compared to the full removal of the structure.

(b) As a necessary prerequisite to determining net environmental benefit as required in subdivision (a), ~~the council~~ *department* shall,

1 upon receipt of its initial application ~~from the department~~ pursuant
2 to Section 6610, establish appropriate criteria for evaluating the
3 net environmental benefit of full removal and partial removal of
4 offshore oil structures.

5 (1) The criteria shall include, but are not limited to, the depth
6 of the partially removed structure in relation to its value as habitat
7 and the location of the structure, including its proximity to other
8 reefs, both natural and artificial.

9 (2) The criteria shall not include any consideration of the funds
10 to be generated by the partial removal of the structure.

11 (3) In determining the criteria, ~~the council~~ *department* shall
12 consult with appropriate entities, including, but not limited to, the
13 ~~department~~, *council*, the commission, *the State Air Resources*
14 *Board*, the California Coastal Commission, and the California
15 Ocean Science Trust.

16 (4) ~~The council~~ *department* shall establish the criteria in time
17 to use them in making its initial determination of net environmental
18 benefit pursuant to this section.

19 (c) Upon certification of environmental documents pursuant to
20 the California Environmental Quality Act, ~~the council~~ *department*
21 shall, based on the criteria developed pursuant to subdivision (b)
22 and other relevant information, determine whether partial removal
23 of the structure would provide a net benefit to the marine
24 environment compared to full removal of the structure. In making
25 the determination, ~~the council~~ *department* shall, at a minimum,
26 take into account the following:

27 (1) The contribution of the proposed structure to protection and
28 productivity of fish and other marine life.

29 (2) Any adverse impacts to biological resources or water quality,
30 *air quality or greenhouse gas emissions*, or any other marine
31 environmental impacts, from the full removal of the facility that
32 would be avoided by partial removal as proposed in the application.

33 (3) Any adverse impacts to biological resources or water quality,
34 *air quality or greenhouse gas emissions*, or any other marine
35 environmental impacts, from partial removal of the structure as
36 proposed in the application.

37 (4) Any benefits to the marine environment that would result
38 from the full removal of the structure or from partial removal as
39 proposed in the application.

1 (5) Any identified management requirements and restrictions
2 of the partially removed structure, including, but not limited to,
3 restrictions on fishing or other activities at the site.

4 (d) Benefits resulting from the contribution of cost savings to
5 the endowment shall not be considered in the determination of net
6 environmental benefit.

7 (e) ~~The council~~ *department* may contract or enter into a
8 memorandum of understanding with any other appropriate
9 governmental or nongovernmental entity to assist in its
10 determination of net environmental benefit.

11 (f) The determination made pursuant to this section ~~and~~
12 ~~submitted to the department by the council~~ shall constitute the
13 final determination and shall not be revised except by the ~~council~~.
14 *department*.

15 (g) ~~The council shall take all feasible steps to complete its~~
16 ~~determination in a timely manner that accommodates the~~
17 ~~department's schedule for consideration of the application.~~

18 SEC. 7. *Section 6614 of the Fish and Game Code is amended*
19 *to read:*

20 6614. (a) Upon certification of the appropriate environmental
21 ~~documents by the lead agency, the commission~~ *documents, the*
22 *department* shall determine, or cause to be determined, the cost
23 savings that will result from the partial removal of an offshore oil
24 structure as proposed in the application compared to full removal
25 of the structure.

26 (b) ~~The commission~~ *department* shall ensure that any cost
27 savings are accurately and reasonably calculated. ~~The commission~~
28 *department* may contract or enter into a memorandum of
29 understanding with any other appropriate governmental agency or
30 other party, including an independent expert, to ensure that cost
31 savings are accurately and reasonably calculated.

32 (c) ~~The commission~~ *department* shall consider any estimates of
33 cost savings made by any governmental agency, including, but not
34 limited to, the Internal Revenue Service, the Franchise Tax Board,
35 and the United States Department of the Interior. ~~The commission~~
36 *department* shall include in its determination a written explanation,
37 which shall be available to the public, of the differences, and the
38 reasons for the differences, between ~~the commission's~~ *department's*
39 determination of cost savings and any other estimates of cost
40 savings ~~the commission~~ *department* considered.

(d) The applicant shall provide all necessary documentation, as determined by the ~~commission~~, *department*, to allow the ~~commission~~ *department* to calculate the amount of cost savings. Failure to provide information requested by the ~~commission~~ *department* in a timely manner may result in rejection of the application.

(e) The determination made pursuant to this section ~~and submitted to the department by the commission~~ shall constitute the final determination and shall not be revised except by the ~~commission~~. *department*.

(f) ~~The commission shall take all feasible steps to complete its determination in a timely manner that accommodates the department's schedule for consideration of the application.~~

SEC. 8. Section 6615 of the Fish and Game Code is amended to read:

6615. Prior to granting conditional approval of an application for partial removal of an offshore oil structure, the department shall do all of the following:

(a) Prepare a plan to manage the offshore oil structure after its partial removal. The plan shall include measures to manage fishery and marine life resources at and around the structure in a manner that will ensure that the net benefits to the marine environment identified pursuant to Section 6613 are maintained or enhanced. Consistent with state and federal law, management measures may include a buffer zone in which fishing or removal of marine life is restricted or prohibited.

(b) Provide an opportunity for public comment on the ~~application~~ *environmental document* pursuant to the California Environmental Quality Act.

(c) Hold a public hearing *for comment on the environmental document pursuant to the California Environmental Quality Act* in the county nearest to the location of the offshore oil structure that is the subject of the application.

SEC. 9. Section 6616 of the Fish and Game Code is amended to read:

6616. The department may grant conditional approval of an application for partial removal of an offshore oil structure only if all of the following criteria are satisfied:

(a) The partial removal of the offshore oil structure and the planning, development, maintenance, and operation of the structure

1 would be consistent with all applicable state, federal, and
2 international laws, including, but not limited to, all of the
3 following:

4 (1) The federal Magnuson-Stevens Fishery Conservation and
5 Management Act (16 U.S.C. Sec. 1801 et seq.).

6 (2) The federal National Fishing Enhancement Act of 1984 (33
7 U.S.C. Sec. 2101 et seq.).

8 (3) The federal Coastal Zone Management Act (16 U.S.C. Sec.
9 1451 et seq.).

10 (4) The California Coastal Management Program.

11 (5) The Marine Life Management Act (Part 1.7 (commencing
12 with Section 7050)).

13 (6) The Marine Life Protection Act (Chapter 10.5 (commencing
14 with Section 2850) of Division 3).

15 (7) State and federal water quality laws.

16 (8) Navigational safety laws.

17 (b) The partial removal of the offshore oil structure provides a
18 net benefit to the marine environment compared to full removal
19 of the structure, as determined pursuant to Section 6613.

20 (c) The cost savings that would result from the conversion of
21 the offshore oil platform or production facility have been
22 determined pursuant to Section 6614.

23 (d) The applicant has provided sufficient funds consistent with
24 subdivision (b) of Section 6612.

25 (e) The department and the applicant have entered into a
26 contractual agreement whereby the applicant will provide sufficient
27 funds for overall management of the structure by the department,
28 including, but not limited to, ongoing management, operations,
29 maintenance, monitoring, and enforcement as these relate to the
30 structure.

31 (f) The department has entered into an indemnification
32 agreement with the applicant that indemnifies the state and the
33 department, to the extent permitted by law, against any and all
34 liability that may result, including, but not limited to, active
35 negligence, and including defending the state and the department
36 against any claims against the state for any actions the state
37 undertakes pursuant to this article. The agreement may be in the
38 form of an insurance policy, cash settlement, or other mechanism
39 as determined by the department. In adopting indemnification
40 requirements for the agreement, the department shall ensure that

the state can defend itself against any liability claims against the state for any actions the state undertakes pursuant to this article and pay any resulting judgments. The department shall consult with and, as necessary, use the resources of the office of the Attorney General in preparing and entering into the indemnification agreement.

(g) The applicant has applied for and received all required permits, leases, and approvals issued by any governmental agency, including, but not limited to, a lease issued by the commission if the proposed project involves state tidelands and submerged lands. For structures located in federal waters, all of the following requirements shall be met:

(1) The department and the owner or operator of the structure reach an agreement providing for the department to take title to the platform or facility as provided in Section 6620.

(2) The department acquires the permit issued by the United States Army Corps of Engineers.

(3) The partial removal of the structure is approved by the Bureau of Ocean Energy Management, Regulation and Safety and Environmental Enforcement of the United States Department of the Interior.

SEC. 10. Section 6618 of the Fish and Game Code is amended to read:

6618. (a) The cost savings from the partial removal of an offshore oil structure, as determined pursuant to Section 6614, shall be apportioned and transmitted as described in this section.

(b) Upon receipt of conditional approval pursuant to Section 6617, ~~the owner or operator of the structure~~ *applicant* shall apportion and directly transmit a portion of the total amount of the cost savings to ~~the entities in subdivision (c)~~ *department* as follows:

(1) Fifty-five percent, if ~~transmitted~~ *the application was submitted* before January 1, ~~2017~~; 2023.

(2) Sixty-five percent, if ~~transmitted~~ *the application was submitted* on or after January 1, ~~2017~~; 2023, and before January 1, ~~2023~~; 2028.

(3) Eighty percent, if ~~transmitted~~ *the application was submitted* on or after January 1, ~~2023~~; 2028.

(c) Of the total amount of the cost savings to be transmitted pursuant to subdivision (b), ~~the applicant~~ *department* shall directly transmit the following amounts to the following entities:

1 (1) Eighty-five percent shall be deposited into the California
2 Endowment for Marine Preservation established pursuant to
3 Division 37 (commencing with Section 71500) of the Public
4 Resources Code.

5 (2) Ten percent shall be deposited into the General Fund.

6 (3) Two percent shall be deposited into the Fish and Game
7 Preservation Fund for expenditure, upon appropriation by the
8 Legislature, by the department to pay any costs imposed by this
9 chapter that are not otherwise provided for pursuant to subdivision
10 (b) of Section 6612 and subdivision (e) of Section 6616. Any
11 moneys remaining in the Fish and Game Preservation Fund, after
12 providing for these costs, shall be used, upon appropriation by the
13 Legislature, first to reimburse the payment of the startup costs
14 described in subdivision (c) of Section 6612, and thereafter to
15 conserve, protect, restore, and enhance the coastal and marine
16 resources of the state consistent with the mission of the department.

17 (4) Two percent shall be deposited into the Coastal Act Services
18 Fund, established pursuant to Section 30620.1 of the Public
19 Resources Code, and shall be allocated to support state agency
20 work involving research, planning, and regulatory review
21 associated with the application and enforcement of coastal
22 management policies in state and federal waters pursuant to state
23 and federal quasi-judicial authority over offshore oil and gas
24 development.

25 (5) One percent shall be deposited with the board of supervisors
26 of the county immediately adjacent to the location of the facility
27 prior to its decommissioning. The amount paid to the county shall
28 be managed pursuant to paragraph (1) of subdivision (d) of Section
29 6817 of the Public Resources Code.

30 ~~SECTION 1. Section 5993 of the Fish and Game Code is~~
31 ~~amended to read:~~

32 ~~5993. Before the installation of any screen under the provisions~~
33 ~~of this article, the department and the owner shall enter into an~~
34 ~~agreement defining the method of determining the cost of~~
35 ~~monitoring screen performance, maintenance, repairs, operation,~~
36 ~~and keeping the screen free of debris, which agreement shall~~
37 ~~provide that, in the event either the department or the owner objects~~

- 1 to the cost, the matter shall be referred to the Director of General
- 2 Services for his or her final and conclusive decision.

O